IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 394 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANBHAI RANCHHODBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR AD SHAH for Applicant(s) : 1,
MR SS PATEL APP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 13/12/2006

ORAL JUDGMENT

1. Invoking Articles 226 and 227 of the Constitution, the petitioner has sought to

indirectly challenge and put to naught the order dated 6/2/1991 of Dy. Conservator of Forest and the judgment and order dated 20th January, 1992 of the learned Sessions Judge in Criminal Appeal No.10 of 1991 whereby truck No. GTO 2668 was ordered to be confiscated and the appeal therefrom was dismissed. Petitioner was not a party to the first confiscation proceedings.

2. On 12/6/1985, Range Forest Officer had caught the said truck for its involvement in illegally carrying the wood stolen from forest area. After seizure of the truck, the registered owner, respondent No.4 herein, had approached this Court and obtained interim relief on 26/7/1985 of releasing the truck on executing a bond and furnishing security. Thereafter the truck is stated to have been sold to the present petitioner on 15/9/1989 and transfered in his name on 16/1/1990. On the other hand, the Dy. Conservator of Forest held proceedings under the provisions of sections 61-A and 61-B of the

Indian Forest Act, 1927, as amended by Gujarat Amendment vide Act 15 of 1960 and Act 19 of 1983 (for short “the Act”) and ordered confiscation of the truck by the order dated 6/2/1991 after affording to the original owner requisite opportunity of being heard by issuing notice dated 13/9/1990. The original owner had only made a written representation before the Dy. Conservator, without mentioning anything about transfer of the truck. Such transfer, in any case, would have violated the bond executed by him. Thereafter the present petitioner challenged that order in Criminal Appeal No. 10 of 1991 before the learned Sessions Judge, Surat and contended that, at the relevant time, the truck owned by the original owner was purchased by him on and from 27/3/1990 and that he had paid Rs.2,23,501/- as price for the truck involved in theft of the goods. Learned Sessions Judge noted that no writing regarding transfer of the truck was found on record and, on the basis that the appellant had failed to take all necessary

precautions against the use of the truck in committing a forest offence, confirmed the order of confiscation.

3. Learned advocate Mr.A.D.Shah appearing for the petitioner vehemently argued that learned Sessions Judge has decided the appeal as if petitioner were the owner of the truck at the time the offence was committed and the truck was caught. He submitted that learned Sessions Judge lost sight of the fact that it was after five years of the seizure of the truck that it had come to be transferred to the petitioner and, as a *bona fide* purchaser of the truck, without notice of the pendency of any proceedings, he was entitled to protection of his proprietary rights even as the original owner could be prosecuted, punished and the security furnished by him encashed for violation of the conditions of the bond. He submitted that the petitioner could not be punished for default or offence committed by the original owner.

4. Learned APP Mr.S.S.Patel vehemently argued that the petitioner had no *locus standi* in the matter, that he was a party to an unscrupulous or unsubstantiated transaction of transfer and trying to step into the shoes of the original owner to defeat the order of confiscation made by the Dy. Conservator of Forest. He submitted that, apparently, the so-called transaction of transfer of truck between the original owner and the present petitioner was a collusion because no evidence whatsoever of the petitioner being a *bona fide* purchaser for value without notice was produced before the Court. He submitted that any other action or complaint by the petitioner against the original owner was conspicuous by its absence in the facts of the present case.

5. The facts required to be noted are that officers of the Forest Department have taken their own time in initiating the proceedings under section 61-A of the Act and the truck which

was seized on 12/6/1985 came to be confiscated by the order dated 6/2/1991. That however, does not absolve the original owner from his obligation to abide by the conditions of the bond subject to which the truck was released to him by way of interim relief. Therefore, admittedly the transfer of the truck, even if genuine and *bona fide* for the purchaser, was illegal. The orders of seizure and confiscation which are not challenged on any other ground could not be defeated by an illegal transfer of the truck. According to express provisions of section 61-B of the Act, notice in writing is required to be given to the person from whom vehilce was seized, informing him of the ground on which it was proposed to confiscate it; and the authorised officer is required to consider his objection, if any. That requirement is fulfilled in facts of the present case. Further requirement of giving notice in writing to the registered owner of the vehicle is subject to the condition that, if in the opinion of the authorised officer it is

practicable to do so. In the facts of the present case, it was never disclosed to the authorised officer and he had no reason to suspect that the truck might have been transferred in violation of the bond executed by the original owner. Therefore, even if the registered owner on the date of the order of confiscation was the petitioner, it was not practicable for the authorised officer to give him a notice for granting him an opportunity of being heard and of considering his objections, if any. And even if such information were disclosed to the authorised officer and the petitioner had the opportunity to raise the objection that he was a *bona fide* purchaser of the truck for value, such objection could not have been accepted because the transaction of transfer could not be substantiated even afterwards and it would clearly have been in violation of the bond executed by the original owner.

6. Therefore, in the peculiar facts and for the

reasons discussed hereinabove, this Court would not be justified in exercising its extra-ordinary jurisdiction to quash the impugned orders whereunder the truck was confiscated and had vested in the Government free from all encumbrances. According to the last submission of Mr.Shah, the petitioner was, by way of interim relief in this petition, entrusted the truck on conditions of executing a bond and furnishing surety and, by now, the truck was kept under “non use permit” in a poor condition after running it upto the year 2001; although an undertaking was filed in this Court to undertake that the truck would be maintained by him in good and road-worthy-condition and that it would be produced as and when required. That submission does not provide any ground for grant of any relief, but it only highlights how prolonged pendency of the proceedings for 14 years has resulted into failure of justice and frustration of the stringent provisions of law.

7. Accordingly, the petition is dismissed, interim relief is vacated and Rule is discharged with the direction to the petitioner to surrender the Truck No. GTO 2668 to the respondent No.3 with costs quantified at Rs.2,500/-.

(D.H.WAGHELA, J.)

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